

Sep 26, 2019

SEAN F. McAVOY, CLERK

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10 UNITED STATES DISTRICT COURT
11 FOR THE EASTERN DISTRICT OF WASHINGTON
12

13 UNITED STATES OF AMERICA,

2:18-CR-00218-RHW

14 Plaintiff,

Plea Agreement

15 v.

16 LARRY NICHOLAS KENNEDY

17 Defendant.
18

19 Plaintiff United States of America, by and through William D. Hyslop, United
20 States Attorney, for the Eastern District of Washington, Earl A. Hicks Assistant
21 United States Attorney for the Eastern District of Washington, Defendant LARRY
22 NICHOLAS KENNEDY, and Defendant's counsel, Jeffrey K. Finer, agree to the
23 following Plea Agreement:

24 1) Guilty Plea and Maximum Statutory Penalties:

25 The Defendant, LARRY NICHOLAS KENNEDY, agrees to plead guilty to
26 Count 1 of the Superseding Indictment, filed on August 6, 2019, in cause No. 2:18-
27 CR-218-RHW, charging Defendant with, Felon in Possession of Firearms and
28 Ammunition in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), which is a Class C
Felony charge, with a maximum statutory penalty of not more than ten (10) years

1 imprisonment; a fine not to exceed \$250,000; a term of supervised release of not more
2 than 3 years; and a \$100.00 special penalty assessment.

3 The Defendant, LARRY NICHOLAS KENNEDY, also agrees to plead guilty
4 to Count 2 of the Superseding Indictment, filed on August 6, 2019, in cause No. 2:18-
5 CR-218-RHW, charging Defendant with, Possession of an Unregistered Firearm, in
6 violation of 26 U.S.C. §§ 5845(a), (f) and 5861(d), a Class C Felony charge, with a
7 maximum statutory penalties of not more than ten (10) years imprisonment; a fine not
8 to exceed \$10,000; a term of supervised release of not more than 3 years; and a
9 \$100.00 special penalty assessment.

10 The Defendant, LARRY NICHOLAS KENNEDY, understands that if he
11 violates his supervised release conditions, he could be imprisoned for up to two (2)
12 years. *See* 18 U.S.C. § 3583(e)(3). Defendant also understand that he would not
13 receive credit for any time already served on post-release supervision.

14 The Defendant, LARRY NICHOLAS KENNEDY, understands that the Court
15 can sentence him to the maximum possible sentence on each count and run the
16 sentences on each count consecutively.

17 2) The Court is Not a Party to the Agreement:

18 The Defendant, LARRY NICHOLAS KENNEDY, understands the Court is not
19 a party to this Plea Agreement and may accept or reject this Plea Agreement.
20 Sentencing is a matter that is solely within the discretion of the Court. The Defendant
21 also understand the Court is not obligated to accept the parties' recommendations and
22 that the Court may, in its discretion, impose any sentence, including the statutory
23 maximums set forth above.

24 The Defendant, LARRY NICHOLAS KENNEDY, acknowledges that no
25 promises of any kind have been made to him with respect to the sentence the Court
26 will impose in this matter. The Defendant understands that the Court is required to
27 consider the applicable advisory sentencing guideline range, but may depart or vary
28

1 upward or downward under the appropriate circumstances. The Defendant also
2 understands that the Court will consider the sentencing factors outlined in 18 U.S.C.
3 § 3553(a) when determining an appropriate sentence.

4 The Defendant, LARRY NICHOLAS KENNEDY, also understands that, if the
5 Court does not accept the parties' recommendations, then that decision is not a basis
6 for withdrawing from either this Plea Agreement or these pleas of guilty.

7 3) Waiver of Constitutional Rights:

8 The Defendant, LARRY NICHOLAS KENNEDY, understands that, by
9 entering these pleas of guilty, he is knowingly and voluntarily, waiving certain
10 constitutional rights, including:

- 11 (a). The right to a jury trial;
- 12 (b). The right to see, hear and question the witnesses;
- 13 (c). The right to remain silent at trial;
- 14 (d). The right to testify at trial; and
- 15 (e). The right to compel witnesses to testify.

16 While the Defendant, LARRY NICHOLAS KENNEDY, is waiving certain
17 constitutional rights, Defendant understands he retains the right, to be assisted through
18 the sentencing and any direct appeal of the conviction and sentence, by an attorney
19 who will be appointed at no cost if Defendant cannot afford to hire an attorney.

20 Defendant also acknowledges that any pretrial motions currently pending, before the
21 Court, are waived.

22 4) Elements of the Offenses:

23 a). COUNT 1:

24 The United States and the Defendant, LARRY NICHOLAS KENNEDY, agree
25 that in order to convict Defendant of Felon in Possession of a Firearm, in violation of
26 18 U.S.C. §§ 922 (g)(1) and 924(a)(2), the United States would have to prove beyond
27 a reasonable doubt the following elements:
28

1 *First*, on or about July 12, 2018, in the Eastern District of
2 Washington, the Defendant, LARRY NICHOLAS KENNEDY,
3 knowingly possessed a Star, model Firestar (M43) 9mm caliber
4 pistol, bearing serial number 1958144, and/or a Taurus, model PT
5 140 Millennium .40 caliber pistol bearing serial number
6 STC85387; and/or a Savage, model 67 Stevens, 12-gauge shotgun
7 bearing an obliterated serial number;
8 *Second*, the Star, model Firestar (M43) 9mm caliber pistol, bearing
9 serial number 1958144, and/or the Taurus, model PT 140
10 Millennium .40 caliber pistol bearing serial number STC85387;
11 and/or the Savage, model 67 Stevens, 12-gauge shotgun bearing an
12 obliterated serial number had previously traveled in interstate or
13 foreign commerce prior to July 12, 2018;
14 *Third*, at the time the Defendant, LARRY NICHOLAS
15 KENNEDY, possessed the Star, model Firestar (M43) 9mm caliber
16 pistol, bearing serial number 1958144, and/or the Taurus, model
17 PT 140 Millennium .40 caliber pistol bearing serial number
18 STC85387; and/or Savage, model 67 Stevens, 12-gauge shotgun
19 bearing an obliterated serial number, on July 12, 2018, the
20 Defendant had previously been convicted of a crime punishable by
21 imprisonment for a term exceeding one year; and
22 *Fourth*, prior to July 12, 2018, the Defendant, LARRY
23 NICHOLAS KENNEDY knew of his status as a person previously
24 convicted of a crime punishable by imprisonment for a term
25 exceeding one year which barred him from possessing firearms.
26 b). COUNT 2:
27
28

1 The United States and the Defendant, LARRY NICHOLAS KENNEDY, agree
2 that in order to convict Defendant of Possession of an Unregistered Firearm, in
3 violation of 26 U.S.C. §§ 5845(a), (f) and 5861(d), 5871, the United States would
4 have to prove beyond a reasonable doubt the following elements:

5 *First*, the Defendant, LARRY NICHOLAS KENNEDY, on or about
6 July 12, 2018, in the Eastern District of Washington, knowingly
7 possessed, a firearm to wit: a weapon made from a Savage, model 67
8 Stevens, 12-gauge shotgun bearing an obliterated serial number

9 *Second*, the Savage, model 67 Stevens, 12-gauge shotgun bearing an
10 obliterated serial number had a barrel length of less than 18 inches;
11 and

12 *Third*, the Savage, model 67 Stevens, 12-gauge shotgun bearing an
13 obliterated serial number, was not registered to the Defendant in the
14 National Firearms Registration and Transfer Record as required by
15 law.

16 5) Factual Basis and Statement of Facts:

17 Pertinent facts are set out below in order to provide a factual basis for the plea
18 and to provide facts, which the Government and Defendant believe are relevant for
19 computing the appropriate guideline range. The statement of facts herein does not
20 preclude either party from presenting and arguing, for sentencing purposes, additional
21 facts or factors not included herein which are relevant to the guideline computation
22 (U.S.S.G. §1B1.3) or to sentencing in general (U.S.S.G. §1B1.4). Nor is the Court or
23 Probation precluded from the consideration of such facts. In "determining the factual
24 basis for the sentence, the Court will consider the stipulation [of the parties], together
25 with the results of the presentence investigation, and any other relevant information."
26 See U.S.S.G. §6B1.4 Comm.

1 The United States and the Defendant, LARRY NICHOLAS KENNEDY,
2 stipulate and agree that the following facts are accurate except where otherwise noted;
3 that the United States could prove these facts beyond a reasonable doubt at trial; and
4 these facts constitute an adequate factual basis for LARRY NICHOLAS
5 KENNEDY's, guilty pleas.

6 On December 31, 2014, the Defendant, LARRY NICHOLAS KENNEDY, was
7 convicted of First Degree Grand Theft, a felony, in the First District Court Kootenai,
8 County, Idaho.

9 In June 2018, Spokane Police Detective Kevin Langford was advised by a
10 cooperating individual, that the Defendant was selling both methamphetamine and
11 heroin and that the Defendant lived at 2711 E. Rowan in Spokane, Washington.
12 Detective Langford advised Department of Corrections (DOC) Officer John
13 Rodriguez of the information. At the time, the Defendant was on DOC supervision.
14 As a condition of his supervision, the Defendant was subject to the search of his
15 residence. Defendant's DOC Probation Officer, Angie Hughes, was advised of the
16 Defendant's alleged violations of his supervision and decided to do a probation
17 search.

18 On July 12, 2018, officers and agents of the Spokane Regional Safe Streets
19 Task Force assisted Probation Officer Hughes with a probation search of the
20 Defendant's residence. During a protective sweep of the residence, DOC Officer
21 Hernandez observed a firearm and ammunition in the Defendant's bedroom in plain
22 sight. The probation search of Defendant's house was halted. It was determined that
23 a State search warrant would be sought because this was not only a violation of the
24 Defendant's probation but it was also a new crime. The Defendant was arrested for
25 violating his probation.

26 Prior to the search of his residence, based upon the state search warrant,
27 Defendant was read his *Miranda rights* by Detective Presta, of the Spokane Police
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1 Department. The Defendant waived his rights and agreed to talk to Detective Presta.
2 Kennedy advised Detective Presta that there were several firearms in the residence
3 and a small quantity of controlled substances. Kennedy admitted that there were three
4 firearms in his residence, to wit: a 9mm and a .40 caliber handgun, as well as a
5 sawed-off shotgun. Detective Brad Richmond of the Spokane Police Department
6 applied for a state search warrant for Defendant's residence. Spokane County
7 Superior Court Judge Maryann Moreno signed a search warrant for Defendant's
8 residence.

9 During the search of Defendant's residence, the following firearms and
10 ammunition were found: (1). a Star, model Firestar (M43), 9mm pistol bearing serial
11 number 1958144; (2). a Taurus, model PT 140 Millennium .40 caliber pistol bearing
12 serial number STC85387; and (3). a Savage, model 67 Stevens, 12-gauge shotgun
13 bearing an obliterated serial number; and the following ammunition, to wit: (4). ten
14 (10) rounds of Winchester, .40 caliber ammunition; (5). seven (7) rounds of Blazer,
15 9mm caliber ammunition; (6). one (1) round of Speer, 9mm caliber ammunition; (7).
16 one (1) round of Winchester, 9mm caliber ammunition; (8). one (1) round of Federal,
17 12 gauge shotgun ammunition; and (9). one (1) round of Remington, 12-gauge
18 shotgun ammunition.

19 The barrel length of the Savage shotgun was less than 18 inches (approximately
20 13 inches) and the overall length of the Savage shotgun was less than 26 inches
21 (approximately 22 inches). Based upon the barrel length and the overall length of the
22 shotgun, it was required to be registered in the National Firearms and Transfer
23 Record. A records check determined that the Defendant and the shotgun were not
24 registered as required by law.

25 SA Piergallini will testify that none of the firearms or ammunition were
26 manufactured in the State of Washington. and therefore, at some time prior to the
27
28

1 Kennedy's possession of the firearms and ammunition had traveled in interstate or
2 foreign commerce.

3 SA Piergallini will further testify: (1). the Star, model Firestar (M43), 9mm
4 pistol bearing serial number 1958144 was manufactured in Spain; (2). the Taurus,
5 model PT 140 Millennium .40 caliber pistol bearing serial number STC85387 was
6 manufactured in Brazil; and (3). the Savage, model 67 Stevens, 12-gauge shotgun
7 bearing an obliterated serial number was manufactured in the United States in the
8 State of Massachusetts.

9 SA Piergallini will also testify the shotgun was not registered to the Defendant
10 in the National Firearms and Transfer Record, as required by law in violation of 26
11 U.S.C. §§ 5845(a),(f), and 5861(d).

12 6) The United States Agrees Not to File Additional Charges:

13 The United States Attorney's Office for the Eastern District of Washington
14 agrees not to bring any additional charges against Defendant based upon information
15 in its possession at the time of this Plea Agreement, unless Defendant breaches this
16 Plea Agreement any time before sentencing.

17 7) Sentencing Guideline Calculations:

18 Defendant understands and acknowledges that the United States Sentencing
19 Guidelines (hereinafter "U.S.S.G.") are applicable to this case, and that the Court will
20 determine Defendant's applicable sentencing guideline range at sentencing. The
21 United States will make no representations regarding the United States Sentencing
22 Guidelines until after, a Presentence Report is completed, by the United States
23 Probation Office, except for acceptance of responsibility.

24 If the Defendant, LARRY NICHOLAS KENNEDY, pleads guilty and
25 demonstrates a recognition and an affirmative acceptance of personal responsibility,
26 for his criminal conduct; provides complete and accurate information during the
27 sentencing process; does not commit any obstructive conduct; accepts this Plea
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1 Agreement no later than September 17, 2019 and enters his plea of guilty at the next
2 scheduled pre-trial conference. the United States will recommend that Defendant
3 receive a two (2) level reduction for acceptance of responsibility and a one (1)-level
4 reduction for timeliness. *See* U.S.S.G. §3E1.1(a) and (b).

5 Defendant and the United States agree that the United States may, at its option
6 and upon written notice to Defendant, not recommend a three (3) level downward
7 reduction for acceptance of responsibility if, before sentencing, Defendant is charged
8 or convicted of any criminal offense whatsoever, or if Defendant tests positive for any
9 controlled substance.

10 8) Incarceration:

11 The United States will recommend a sentence at the low end of the applicable
12 advisory sentencing guideline range as determined by the Court.

13 The Defendant may recommend any legal sentence he feels is appropriate and
14 move for any downward departure or variance he feels is appropriate.

15 The United States expects the Defendant will move for a downward departure
16 based upon his belief that the sentencing guidelines will over represent the true nature
17 of the Defendant's criminal history. The United States will defer this issue to the
18 Court without argument. The United States can contest any other basis for a
19 downward departure or variance put forth by the Defendant.

20 9) Criminal Fine:

21 The United States and Defendant are free to make whatever recommendation
22 concerning the imposition of a criminal fine they believe is appropriate.

23 10) Supervised Release:

24 The United States and the Defendant, LARRY NICHOLAS KENNEDY, agree
25 to recommend that the Court impose a three (3)-year term of supervised release to
26 include the following special conditions, in addition to the standard conditions of
27 supervised release:
28

- a. Defendant participate and complete such drug and alcohol testing and drug and alcohol treatment programs as the Probation Officer directs;
- b. Defendant participate and complete such mental health testing and mental health treatment programs as the Probation Officer directs;
- c. Defendant's person, residence, office, vehicle, and belongings are subject to search at the direction of the Probation Officer based upon reasonable suspicion that the Defendant is violating a condition of his supervision.

11) Restitution:

The United States submits that there is no restitution owing in this case.

12) Mandatory Special Penalty Assessment:

The Defendant, LARRY NICHOLAS KENNEDY, agrees to pay the \$200 mandatory special penalty assessment to the Clerk of Court for the Eastern District of Washington. *See* 18 U.S.C. § 3013.

13) Payments While Incarcerated:

If the Defendant, LARRY NICHOLAS KENNEDY, lacks the financial resources to pay the monetary obligations imposed by the Court before sentencing, then Defendant agrees to earn the money to pay toward these obligations by participating in the Bureau of Prisons' Inmate Financial Responsibility Program.

14) Forfeiture:

The Defendant, Larry Nicholas Kennedy, agrees to voluntarily forfeit any and all right, title and interest he has in the following listed assets, pursuant to 18 U.S.C. § 924(d)(1) and 28 U.S.C. § 2461(c) and/or 49 U.S.C. § 80303, 26 U.S.C. § 5872 and 28 U.S.C. § 2461(c), in favor of the United States:

- a Star, model Firestar (M43), 9mm pistol bearing serial number 1958144;
- a Taurus, model PT 140 Millennium .40 caliber pistol bearing serial number STC85387;

- a Savage, model 67 Stevens, 12-gauge shotgun bearing an obliterated serial number;
- ten (10) rounds of Winchester, .40 caliber ammunition;
- seven (7) rounds of Blazer, 9mm caliber ammunition;
- one (1) round of Speer, 9mm caliber ammunition;
- one (1) round of Winchester, 9mm caliber ammunition;
- one (1) round of Federal, 12 gauge shotgun ammunition; and
- one (1) round of Remington, 12-gauge shotgun ammunition.

The Defendant warrants that he is the sole owner of the asset(s) listed above, and acknowledges that the asset(s) covered by this agreement are subject to forfeiture as property facilitating or involved in illegal conduct in violation of 18 U.S.C. §§ 922(g)(1), 924(a)(2), Felon in Possession of a Firearm, and/or in violation of Possession of an Unregistered Firearm, in violation of 26 U.S.C. §§ 5845(a), (f) and 5861(d) are therefore forfeitable to the United States pursuant to 18 U.S.C. § 924(d)(1) and 28 U.S.C. § 2461(c) or 49 U.S.C. § 80303, 26 U.S.C. § 5872 and 28 U.S.C. § 2461(c).

The Defendant agrees to take all steps as requested by the United States to pass clear title to the assets to the United States and to testify truthfully in any forfeiture proceeding.

The Defendant agrees to hold all law enforcement and the United States, its agents, and its employees harmless from any claims whatsoever arising in connection with the seizure and forfeiture of any asset(s) covered by this agreement. Defendant consents to the forfeiture, destruction, and/or return of assets to lawful owners, without further notice.

The Defendant further agrees to waive all constitutional, equitable and statutory challenges in any manner (including direct appeal, habeas corpus, or any other means) to any forfeiture carried out in accordance with this Plea Agreement on any grounds,

1 including that the forfeiture constitutes an excessive fine or punishment. Defendant
2 knowingly and voluntarily waives his right to a jury trial on the forfeiture of the
3 asset(s). Defendant waives oral pronouncement of forfeiture at the time of sentencing,
4 and any defects that may pertain to the forfeiture.

5 15) Additional Violations of Law Can Void Plea Agreement:

6 The Defendant, LARRY NICHOLAS KENNEDY, and the United States agree
7 that the United States may, at its option and upon written notice to Defendant,
8 withdraw from this Plea Agreement or modify its recommendation for sentence if,
9 before the sentence is imposed, Defendant is charged or convicted of any criminal
10 offense whatsoever, or if Defendant tests positive for any controlled substance.

11 16) Appeal Rights:

12 The Defendant, LARRY NICHOLAS KENNEDY, understands that he has a
13 limited right to appeal or challenge the conviction and sentence imposed by the Court.
14 Defendant hereby expressly waives his right to appeal or challenge his conviction.
15 The Defendant waives his right to appeal his sentence unless he is sentenced to a term
16 of imprisonment greater than the high end of the advisory guideline range as
17 determined by the Court.

18 The Defendant, LARRY NICHOLAS KENNEDY, expressly waives his right to
19 file any post-conviction motion attacking his conviction and sentence, including a
20 motion pursuant to 28 U.S.C. § 2255, except one based upon ineffective assistance of
21 counsel, based on information not now known by Defendant and which, in the
22 exercise of due diligence, could not be known by Defendant by the time the Court
23 imposes the sentence.

24 If the Defendant, LARRY NICHOLAS KENNEDY, successfully moves to
25 withdraw from this Plea Agreement, or should any of his convictions for any charge
26 he has plead guilty to under this Plea Agreement be dismissed, set aside, vacated, or
27 reversed, this Plea Agreement shall become null and void; the United States may
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1 move to reinstate the Indictment under cause number 2:18-CR-218-RHW and the
2 United States may prosecute the Defendant on all available charges involving or
3 arising from the Indictment referenced in this Plea Agreement.

4 17) Integration Clause:

5 The United States and the Defendant, LARRY NICHOLAS KENNEDY,
6 acknowledge that this document constitutes the entire Plea Agreement between the
7 United States and Defendant, and no other promises, agreements, or conditions exist
8 between the United States and Defendant. This Plea Agreement is binding only upon
9 the United States Attorney's Office for the Eastern District of Washington, and
10 therefore cannot bind other federal, state or local authorities. The United States and
11 Defendant agree, this agreement cannot be modified except in a writing signed by the
12 United States and Defendant.

13 Approvals and Signatures

14 Agreed and submitted on behalf of the United States Attorney's Office for
15 the Eastern District of Washington.

16 William D. Hyslop
17 United States Attorney

18
19 Earl A. Hicks

20 Earl A. Hicks
21 Assistant U.S. Attorney

22 9/26/2019
23 Date

24 I have read this Plea Agreement, and have carefully reviewed and discussed
25 every part of the agreement with my attorneys. I understand and voluntarily enter into
26 this Plea Agreement. Furthermore, I have consulted with my attorneys about my
27 rights, I understand those rights, and I am satisfied with the representation of my
28 attorney in this case. No other promises or inducements have been made to me, other
than those contained in this Plea Agreement and no one has threatened or forced me in

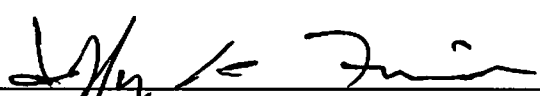
any way to enter into this Plea Agreement. I am agreeing to plead guilty because I am guilty


LARRY NICHOLAS KENNEDY
Defendant

9.26-19
Date

//

/I have read the Plea Agreement and have discussed the contents of the agreement with my client. The Plea Agreement accurately and completely sets forth the entirety of the agreement between the parties. I concur in my client's decision to plead guilty as set forth in the Plea Agreement. There is no legal reason why the Court should not accept Defendant's plea of guilty.


Jeffrey K. Finer
Attorney for the Defendant

9.26-19
Date